

Message Text

CONFIDENTIAL

PAGE 01 USUN N 00209 01 OF 05 212303Z

67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 085217

O 212155Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 5449

C O N F I D E N T I A L SECTION 1 OF 5 USUN 0209

EXDIS

FOR IO, L AND NEA

DELIVER OPENING OF BUSINESS THURSDAY, 22 JANUARY

E.O. 11652: GDS

TAGS: UN

SUBJ: DOUBLE VETO SPEECH FOR AMB. MOYNIHAN

THERE FOLLOWS THE TEXT OF A STATEMENT PREPARED FOR
CONSIDERATION BY AMBASSADOR MOYNIHAN FOR DELIVERY ON
SUNDAY MORNING, 25 JANUARY, AT THE WALDORF-ASTORIA
TO A MIDDLE EAST SYMPOSIUM OF THE NATIONAL COMMITTEE ON
AMERICAN FOREIGN POLICY, INC. GENE ROSTOW WILL PRESIDE
OVER THE SYMPOSIUM, LEO GROSS OVER THE PANEL AT WHICH
AMBASSADOR MOYNIHAN IS TO SPEAK.

QUOTE:

2D DRAFT, 21 JANUARY 1976

PASSAGE ON THE DOUBLE VETO FOR POSSIBLE INCLUSION IN AN
ADDRESS TO BE GIVEN BY AMBASSADOR MOYNIHAN BEFORE A MIDDLE
EAST SYMPOSIUM OF THE NATIONAL COMMITTEE ON AMERICAN
FOREIGN POLICY, INC., 25 JANUARY, WALDORF-ASTORIA

I WANT THIS MORNING TO SPEAK OF ONE ASPECT OF THE CURRENT
SECURITY COUNCIL REVIEW OF THE MIDDLE EAST SITUATION THAT HS
AROUSED MUCH INTEREST. THIS HAS TO DO WITH THE "CONSTITUTIONAL"

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 00209 01 OF 05 212303Z

CONTEXT OF THE SECURITY COUNCIL'S INVITATION TO THE PALESTINE

LIBERATION ORGANIZATION TO PARTICIPATE IN THE COUNCIL'S DELIBERATIONS.

ON JANUARY 12 THE COUNCIL DECIDED TO INVITE THE PLO TO PARTICIPATE, AND CHARACTERIZED THE INVITATION AS CONFERRING ON THE PLO "THE SAME RIGHTS OF PARTICIPATION AS ARE CONFERRED WHEN A MEMBER STATE IS INVITED TO PARTICIPATE UNDER RULE 37" OF THE COUNCIL'S PROVISIONAL RULES OF PROCEDURE. ELEVEN MEMBERS OF THE SECURITY COUNCIL VOTED FOR THIS PROPOSAL, WHICH WAS PUT FORWARD BY LIBYA. THREE OF THE COUNCIL'S FOUR WESTERN EUROPEAN MEMBERS -- THE UNITED KINGDOM, FRANCE AND ITALY -- ABSTAINED FROM THE VOTE. THE UNITED STATES VOTED AGAINST. OUR NEGATIVE VOTE WAS NOT, HOWEVER, A VETO.

THE UNITED STATES' NON-VETO NEGATIVE VOTE PARALLELED OUR VOTE THE FIRST TIME THIS ISSUE AROSE, A MONTH EARLIER. THE EARLIER CASE AROSE ON DECEMBER 4 WHEN, OVER UNITED STATES OBJECTIONS AND A NEGATIVE VOTE, THE COUNCIL DECIDED TO INVITE THE PLO TO PARTICIPATE IN ITS CONSIDERATION OF A LEBANESE -- EGYPTIAN COMPLAINT AGAINST ISRAELI AIR RAIDS ON DECEMBER 2 ON CERTAIN CAMPS IN LEBANON. ON THAT EARLIER OCCASION, TOO, A MAJORITY IN THE COUNCIL APPROVED BY VOTE A MOTION WHICH CHARACTERIZED THE PARTICIPATORY RIGHTS TO BE CONFERRED ON THE PLO AS "THE SAME RIGHTS OF PARTICIPATION AS ARE CONFERRED WHEN A MEMBER STATE IS INVITED TO PARTICIPATE UNDER RULE 37". ON BOTH OCCASIONS OUR STRONG AND EXPRESSED OPPOSITION, CULMINATING IN A NEGATIVE VOTE, DID NOT CONSTITUTE A VETO. THERE ARE SOME POINTS OF INTEREST IN THIS MATTER.

MANY OF THE FORCES AT WORK IN THE NEGOTIATION OF THE UNITED NATIONS CHARTER TOWARD THE END OF THE SECOND WORLD WAR CAN BE SEEN IN OPERATION TODAY. THEN, AS NOW, MOST COUNTRIES RECOGNIZED THAT GREAT POWER AGREEMENT TO THE ESTABLISHMENT AND FUNCTIONING OF THE SECURITY COUNCIL WOULD BE DEPENDENT UPON GREAT POWER POSSESSION OF A POWER TO CAST A VETO; THAT IS, THE ABILITY TO SAY "NO" AUTHORITATIVELY AS AGAINST ACTION ON MATTERS OF SUBSTANCE PROPOSED IN THE SECURITY COUNCIL. YET, DISLIKE FOR THE VETO POWER WAS INTENSELY FELT BY MANY OF THE SMALL COUNTRIES DURING

CONFIDENTIAL

PAGE 03 USUN N 00209 01 OF 05 212303Z

THE NEGOTIATIONS ON THE CHARTER AT THE SAN FRANCISCO CONFERENCE IN THE SPRING OF 1945. MANY COUNTRIES FEARED THE CONSEQUENCES OF POTENTIAL ABUSE OF THE POWER TO VETO, AND OTHERS, AMONG THEM A NUMBER OF THE LATIN AMERICANS, OBJECTED THAT THE VETO POWER WAS INCONSISTENT WITH THE CHARTER'S FUNDAMENTAL PRINCIPLE OF THE SOVEREIGN EQUALITY OF STATES AND THE REQUIREMENT OF AN EFFECTIVELY FUNCTIONING COLLECTIVE SECURITY ORGAN.

IT IS AGAINST THIS BACKGROUND THAT ON JUNE 7, 1945
AT THE SAN FRANCISCO CONFERENCE THE UNITED STATES, THE UNITED
KINGDOM, THE SOVIET UNION, AND THE REPUBLIC OF CHINA ISSUED
THE SO-CALLED "STATEMENT BY THE DELEGATIONS OF THE FOUR
SPONSORING GOVERNMENTS ON VOTING PROCEDURE IN THE SECURITY
COUNCIL". A MAIN PURPOSE OF THIS STATEMENT WAS TO GIVE
ASSURANCE TO THE CONFERENCE PARTICIPANTS THAT THE VETO
POWER WOULD CLEARLY NOT OBTAIN AS TO ANY MATTER OF COUNCIL
PROCEDURE, BUT WOULD HAVE APPLICATION ONLY TO PROPOSED
SUBSTANTIVE ACTION BY THE COUNCIL OR ITS MEMBERS. THUS,
BY WAY OF EXAMPLE, THE FOUR POWERS STATED THAT THE VETO
WOULD NOT APPLY TO SUCH MATTERS OF PROCEDURE AS "THE TIMES
AND PLACES OF ... MEETINGS" OR TO THE SETTING UP OF "BODIES ...
IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS".
SIMILARLY, THE FOUR POWERS AGREED THAT A VETO COULD NOT
BE CAST TO PREVENT ANY PROPOSED INVITATION TO "A MEMBER
OF THE ORGANIZATION NOT REPRESENTED ON THE COUNCIL TO
PARTICIPATE IN ITS DISCUSSIONS WHEN THAT MEMBER'S
INTERESTS ARE SPECIALLY AFFECTED". THEY LIKEWISE AGREED
TO THE NON-VETOABLE CHARACTER OF PROPOSALS TO INVITE
PARTICIPATION BY ANY STATE, EVEN IF NOT A MEMBER OF THE
UNITED NATIONS, IF "IT IS A PARTY TO A DISPUTE BEING
CONSIDERED BY THE COUNCIL".

HAVING MADE THIS BOW TO SMALL-POWER CONCERNS, THE
FOUR SPONSORING POWERS WENT ON TO SAY THAT ALTHOUGH IT
SEEMED UNLIKELY, A "PRELIMINARY" QUESTION MIGHT CONCEIVABLY
ARISE IN A PARTICULAR CASE AS TO WHETHER A VETOABLE MATTER
OF SUBSTANCE OR A NON-VETOABLE PROCEDURAL ISSUE WAS INVOLVED.
THE FOUR POWERS STATED THAT IN THAT INSTANCE THE "DECISION
REGARDING THE PRELIMINARY QUESTION" WOULD ITSELF BE SUBJECT
TO THE VETO.
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 00209 01 OF 05 212303Z

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 00209 02 OF 05 212253Z

67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 084989

O 212155Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 5450

C O N F I D E N T I A L SECTION 2 OF 5 USUN 0209

EXDIS

IT IS IN THIS CONTEXT THAT THE SO-CALLED "DOUBLE VETO" WOULD ARISE. THE DOUBLE VETO, AS THE FOUR POWER STATEMENT CONCEIVES IT, REFERS TO THE POWER OF A PERMANENT MEMBER OF THE SECURITY COUNCIL TO RESOLVE ANY REASONABLE QUESTION AS TO THE SUBSTANTIVE OR PROCEDURAL CHARACTER OF A PROPOSED SECURITY COUNCIL ACTION BY VOTING IN A PRELIMINARY WAY THAT THE ACTION IS SUBSTANTIVE (THE FIRST VETO) AND THEN CASTING A VETO AGAINST THE ACTION ITSELF (THE SECOND OR "DOUBLE"VETO).

LEST YOU THINK I AM DWELLING AT UNDUE LENGTH ON THIS ANCIENT HISTORY, I WOULD SUMMARY BY SAYING THAT IN ALL THE THIRTY YEARS OF SECURITY COUNCIL EXPERIENCE COMENCING ON 1946, THERE HAVE BEEN ONLY A FEW INSTANCES IN WHICH A DOUBLE VETO WAS SUCCESSFULLY CAST, THAT IS WHERE THE NAY-SAYING PERMANENT MEMBER WAS ABLE TO MAKE EFFECTIVE ITS VIEW THAT A PARTICULAR PROPOSED COURSE OF ACTION INVOLVE MATTERS OF SUBSTANCE AND WAS ACCORDINGLY SUBJECT TO VETO. IT IS NOT SURPRISING IN VIEW OF THE VOLUME OF SECURITY COUNCIL BUSINESS THAT THERE WERE A NUMBER OF OCCASIONS DURING THE FIRST YEARS OF THE COUNCIL, THE PERIOD 1946 THROUGH 1948, IN WHICH QUESTIONS RELATED TO DOUBLE VETO ISSUES WERE TOUCHED UPON AT THE PERIPHERY OF COUNCIL DISCUSSIONS. THERE ARE THREE, IF I MAY SAY SO, HARD-CORE CASES IN WHICH QUESTIONS INVOLVING THE DOUBLE VETO AROSE AND A PERMANENT MEMBER WAS ABLE TO BLOCK ACTION SOUGHT BY THE MAJORITY OF THE COUNCIL IN A SITUATION CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 00209 02 OF 05 212253Z

WHERE THERE WAS AREAL QUESTION AS TO WHETHER THE ACTION CONCERNED WAS SUBSTANTIVE, AND VETOABLE, OR PROCEDURAL AND NOT VETOABLE.

THE FIRST CASE AROSE IN JUNE, 1946 AND INVOLVED A SOVIET NEGATIVE VOTE ON AN AUSTRALIAN-UNITED KINGDOM PROPOSAL THAT THE SECURITY COUNCIL CONTINUE TO REVIEW THE SPANISH QUESTION. AT THE 49TH MEETING OF THE COUNCIL, 5#3 9;835 7,89, AND FRANCE VOTED AGAINST THE ISSUE

BEING REGARDED AS PROCEDURAL; THE MEXICAN PRESIDENT, WHO HAD EARLIER RULED THAT THE QUESTION WAS PROCEDURAL, THEN RULED THAT THE PROPOSAL WAS SUBSTANTIVE AND HAD BEEN DEFEATED. A SECOND CASE, WHICH TOOK PLACE IN SEPTEMBER, 1947, CONCERNED A UNITED STATES PROPOSAL THAT THE GENERAL ASSEMBLY BE ASKED TO MAKE RECOMMENDATIONS ON CERTAIN GREEK FRONTIER INCIDENTS. AGAINST A CONFUSING PROCEDURAL DISCUSSION, THE SOVIET PRESIDENT, ANDREI BROMYKO, RULED THAT A MOTION TO TREAT THE U.S. PROPOSAL AS PROCEDURAL HAD BEEN DEFEATED BECAUSE THE USSR HAD VOTED AGAINST IT (202D MEETING). A THIRD CASE AROSE IN 1948 WHEN, IN AN EVEN MORE PROCEDURALLY CONFUSING AND OBSCURE CONTEXT, THE PRESIDENT, M. PARODI, OF FRANCE, RULED IN SUPPORT OF THE USSR CONTENTION THAT AN ARGENTINE-CHILEAN DRAFT RESOLUTION CALLING FOR THE APPOINTMENT OF A SUBCOMMITTEE TO CONSIDER EVIDENCE RELATING TO THE SITUATION IN CZECHOSLOVAKIA WAS SUBSTANTIVE IN CHARACTER. M. PARODI ASKED THOSE MEMBERS OF THE COUNCIL WHO OBJECTED TO HIS RULING TO RAISE THEIR HANDS. SIX MEMBERS OBJECTED, THE SOVIET UNION AND UKRAINE VOTED TO UPHOLD, AND THE UNITED STATES, THE UNITED KINGDOM AND FRANCE ABSTAINED. THE PRESIDENT THEN RULED THAT HIS INTERPRETATION HAD BEEN UPHELD BECAUSE THERE HAD NOT BEEN THE REQUISITE 7 VOTES TO OVERTURN IT. (303RD MEETING). I PASS OVER THESE CASES IN SUMMARY FASHION BECAUSE THEY ARE OF LIMITED RELEVANCE TO THE PLO QUESTION.

AN ANALYSIS OF THESE CASES SHOWS THAT A SUCCESSFUL EFFORT TO TREAT PROCEDURAL PROBLEMS AS INVOLVING QUESTIONS OF SUBSTANCE WAS SUCCESSFUL EITHER BECAUSE OF THE INEPTITUDE OR PARTIALITY OF THE SECURITY COUNCIL PRESIDENT OR BECAUSE OF FAILURE OF OTHER MEMBERS OF THE SECURITY COUNCIL

CONFIDENTIAL

PAGE 03 USUN N 00209 02 OF 05 212253Z

COUNCIL TO LOBBY AND PROTEST EFFECTIVELY.

SINCE MAY 24, 1948, WHEN THE CZECH CASE AROSE, THERE HAS NOT BEEN A SUCCESSFUL DOUBLE VETO. I WOULD NOW LIKE TO DESCRIBE THE ONLY TWO CASES SINCE THAT TIME IN WHICH A DOUBLE VETO WAS ATTEMPTED. EACH TIME IT FAILED.

IN 1950, THE REPRESENTATIVE OF CHINA, OUR OLDEST AND MOST TRUSTED ALLY IN ASIA AT THE TIME AND ONE WITH MANY WARN AND POWERFUL FRIENDS IN THE UNITED STATES, TRIED TO TREAT AS AVETOES ITS NEGATIVE VOTE AND THAT OF THE UNITED STATES AGAINST AN ECUADORIAN PROPOSAL FOR THE SECURITY COUNCIL TO INVITE THE PEOPLE'S REPUBLIC OF CHINA TO PARTICIPATE IN THE COUNCIL'S DISCUSSION OF A PRC COMPLAINT THAT THE REPUBLIC OF CHINA HAD "INVADED" TAIWAN. IN THAT CASE THE UNITED STATES SPOKE OUT IN THE COUNCIL

TO SAY THAT, NOTWITHSTANDING AMERICAN OPPOSITION TO
THE MAINLAND AUTHORITIES AND OUR UNRESERVED SUPPORT FOR

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 00209 03 OF 05 212315Z

67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 085570

O 212155Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 5451

C O N F I D E N T I A L SECTION 3 OF 5 USUN 0209

EXDIS

FOR IO, L AND NEA

DELIVER OPENING OF BUSINESS THURSDAY, 22 JANUARY

THE REPUBLIC OF CHINA, THE PROPOSAL OF ECUADOR TO
INVITE PARTICIPATION BY REPRESENTATIVES OF THE UN-
RECOGNIZED MAINLAND REGIME WAS PLAINLY PROCEDURAL;
IT INVOLVED THE WORKING OF THE COUNCIL AND COULD NOT
BE VETOED.

THE POSITION OF THE UNITED STATES AT THAT TIME
ON THE REPRESENTATION OF CHINA NEEDS TO BE RECALLED.
WE CONSIDERED THAT THERE WAS BUT ONE CHINA, A FOUNDING
MEMBER OF THE UNITED NATIONS, THAT THE REPUBLIC OF CHINA
WAS THAT CHINA, THAT THE GOVERNMENT OF THE REPUBLIC OF CHINA,
WHICH WAS OPERATING FROM TAIPEI, CONSTITUTED THE ONLY
LEGITIMATE GOVERNMENT OF CHINA AND THE ONLY LEGITIMATE
REPRESENTATIVE OF THE CHINESE PEOPLE. LET ME GIVE
A FEW EXAMPLES OF WHAT THE UNITED STATES REPRESENTATIVE
IN THE COUNCIL, ERNEST GROSS, SAID IN ORDER TO OFFER
A FLAVOR OF THE POLITICAL, LEGAL, INSTITUTIONAL AND
PARLIAMENTARY CONTEXT. ON SEPTEMBER 28, 1950, HE SAID:

"IN OPPOSING THE INVITATION TO THE CHINESE
COMMUNIST REGIME ... MY GOVERNMENT HAS NO
DESIRE TO DENY THE COMPLAINING PARTY AN

APPROPRIATE HEARING AND AN OPPORTUNITY TO
PRESENT EVIDENCE, HOWEVER RECKLESS ITS CHARGES
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 00209 03 OF 05 212315Z

MAY BE. WE DO, NEVERTHELESS, OPPOSE AN
INVITATION TO HEAR THE PEIPING REGIME IN THIS
FORUM AT THIS STAGE. A DEBATE ON THE MERITS,
WITH THE CHINESE COMMUNIST REGIME SEATED HERE
AND WITHOUT ANY PRIOR ASCERTAINMENT OF THE
FACTS, WOULD, WE FEEL, BE BOUND TO LEAD TO THE
RESULT WHICH I HAVE DESCRIBED BEFORE: THAT IS,
THE EMPLOYMENT -- I MIGHT SAY THE SUBVERSION --
OF THE SECURITY COUNCIL AS A FORUM FOR PURPOSES
OF PROPAGANDA."
(505TH MEETING, P. 9)

ON THE NEXT DAY, THE PRESIDENT, SIR GLADWYN JEBB OF
THE UNITED KINGDOM PUT TO THE VOTE THE ECUADORIAN
PROPOSAL TO INVITE THE PRC UNDER RULE 39. THE VOTE WAS
7 IN FAVOR, 3 AGAINST, THESE THREE BEING THE UNITED STATES,
THE REPUBLIC OF CHINA AND CUBA, WITH ONE ABSTENTION.
THE PRESIDENT ANNOUNCED THAT THE RESOLUTION WAS ADOPTED.
THE CHINESE DELEGATE APPEALED THE RULING. IN THE ENSUING
DISCUSSION, AMBASSADOR GROSS SAID:

"IN SPITE OF THE FACT THAT MY DELEGATION IS
STRONGLY OPPOSED TO THIS MOTION AND VOTED
AGAINST IT, I BELIEVE THAT IT WOULD BE A MOST
UNDESIRABLE PRECEDENT FOR THE SECURITY COUNCIL
TO ACCEPT THE PROPOSITON THAT AN INVITATION
TO AN OUTSIDE PARTY TO ATTEND SECURITY COUNCIL
MEETINGS IS A SUBSTANTIVE MATTER WHICH IS SUBJECT
TO THE GREAT POWER VETO. IN OUR OPINION, THIS
RESOLUTION INVOLVED CLEARLY A PROCEDURAL
QUESTION."

...

"THE UNITED STATES HAS ALWAYS TAKEN THE POSITION
THAT PART II OF THE SAN FRANCISCO DECLARATION
CANNOT BE TAKEN AS ALTERING OR RENDERING ILLUSORY
PART I OF THAT STATEMENT. DECISIONS WHICH
PART I STATES ARE PROCEDURAL CANNOT, WE THINK,
PROPERLY BE LABELLED SUBSTANTIVE BY ACTION OF
A PERMANENT MEMBER OF THE SECURITY COUNCIL UNDER
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 00209 03 OF 05 212315Z

PART II. ANY SUCH RESORT TO THE SAN FRANCISCO
DECLARATION WOULD, IN THE OPINION OF MY
GOVERNMENT, BE INAPPROPRIATE."

....

"MY DELEGATION -- AS I NEED HARDLY REPEAT --
VOTED AGAINST THE MOTION TO WHICH I AM NOW
ADDRESSING MYSELF. WE DO NOT THINK, FOR THE REASONS
WHICH I HAVE STATED, THAT IT IS APPROPRIATE AT THIS
TIME TO INVITE THE CHINESE COMMUNIST REPRESENTATIVES
TO THIS FORUM FOR THE PURPOSE ENVISAGED IN THE
RESOLUTION. BUT DESPITE OUR FEELING IN THAT
REGARD, WE BELIEVE FIRMLY THAT THE MAJORITY
OF THE COUNCIL HAS THE RIGHT UNDER THE CHARTER
AND THE PRECEDENTS TO TAKE THAT DECISION AS A
PROCEDURAL MATTER."

(506TH MEETING, PP. 12, 13, 14)

LATER THAT DAY, AT THE 507TH MEETING, THE PRESIDENT PUT
TO THE VOTE THE INSISTENT CHINESE CHALLENGE TO HIS RULING.
NINE MEMBERS VOTED IN FAVOR OF THE RULING THAT THE
ECUADORIAN PROPOSAL WAS PROCEDURAL, THE ROC VOTED
AGAINST AND CUBA ABSTAINED. GLADWYN JEBB THEN RULED
THAT THE PROPOSAL WAS ADOPTED, CONTINUING CHINESE
OBJECTIONS TO THE CONTRARY NOTWITHSTANDING.

NOW, THE ECUADORIAN PROPOSAL WAS TO HEAR THE
THE CHINESE MAINLAND AUTHORITIES EXPRESSLY UNDER
RULE 39. HOWEVER, THE SAME QUESTION WOULD HAVE BEEN
RAISED IN TERMS OF THE FOUR POWER STATEMENT HAD NOTHING
BEEN SAID IN ECUADOR'S PROPOSAL OF RULE 39 OR HAD
THE COUNCIL SOUGHT TO INFLATE THE INVITATION TO THE
MAINLAND WITH RHETORIC SUCH AS IT HAS JUST USED IN THE
PLO CASE. THERE WAS NOTHING SAID IN THE 1945 FOUR
POWER STATEMENT CONCERNING THE RULE 39 OR ANY OTHER
RULES OF THE COUNCIL; THE COUNCIL DID NOT EXIST AND
THERE WERE NO COUNCIL RULES OF PROCEDURE. WHAT WAS
INVOLVED WAS MORE THAN A RIGHT, IRRELEVANT OR WRONG

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 00209 04 OF 05 212308Z

67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 085370

O 212155Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 5452

C O N F I D E N T I A L SECTION 4 OF 5 USUN 0209

EXDIS

RULES OF PROCEDURE. WHAT WAS INVOLVED WAS THE PRINCIPLE THAT THE APPEARANCE OF A WITNESS BEFORE THE COUNCIL, WHETHER THAT WITNESS REPRESENTS A GOVERNMENT, A NON-GOVERNMENT ENTITY OR MOVEMENT, OR AN INDIVIDUAL, RAISES QUESTIONS CONCERNING THE FUNCTIONING AND PROCEDURES OF THE COUNCIL AND IS NOT SUBJECT TO THE VETO OF A PERMANENT MEMBER. THE FOURT POWER STATEMENT SPOKE OF APPEARANCES ONLY OF PERSONS REPRESENTING STATES, THAT IS, OF GOVERNMENTAL REPRESENTATIVES, BUT THAT WAS THE EXAMPLE OF THE DAY. HAD SO-CALLED LIBERATION MOVEMENTS OR OTHER POLITICAL MOVEMENTS NOT CLAIMING TO REPRESENT GOVERNMENTS BEEN THOUGHT LIKELY TO RAISE REALISTIC AND TIMELY POTENTIALPPROBLEMS, NO DOUBT THE FOURT POWER STATEMENT WOULD HAVE ALSO INCOUDED APPEARANCES ON BEHALF OF SUCH ENTITIES AS INVOLVING PROCEDURAL, NON-VETOABLE QUESTIONS.

THE SECOND, ALTHOUGH UNSUCCESSFUL EFFORT IN OUR GENERATION TO CAST A DOUBLE VETO AROSE IN 1959 WHEN THE USSR TRIED TO USE THE DOUBLE VETO AGAINST A PROPOSAL TO ESTABLISH A FACT-FINDING SUBCOMMITTEE OF THE COUNCIL TO LOOK INTO COMPLAINTS OF INFILTRATION INTO LAOS OF HOSTILE AGENTS FROM NEIGHBORING COUNTRIES. THE SOVIET ATTEMPT WAS UNSUCCESSFUL. IN THE DEBATE THE UNITED STATES MADE THE POINT THAT, AS I NOTED EARLIER, THE 1945 FOUR POWER STATEMENT HAD EXPRESSLY AGREED TO TREAT AS PROCEDURAL ANY PROPOSAL TO "ESTABLISH SUCH BODIES OR AGENCIES AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 00209 04 OF 05 212308Z

ITS FUNCTIONS". AS IN 1950, THE UNITED TOOK THE POSITION THAT A PERMANENT MEMBER COULD NOT SEEK TO SUE THE DOUBLE VETO MECHANISM TO OBSTRUCT ACTION THAT THE MAJORITY OF COUNCIL MEMBERS IN GOOD FAITH CONSIDER TO BE PROCEDURAL IN CHARACTER. THE THEN PRESIDENT OF THE COUNCIL, EGIDIO ORTONA OF ITALY, ASKED THE MEMBERS OF THE COUNCIL TO INDICATE WHETHER THEY CONSIDERED THAT THE PROPOSAL FOR A LAOTIAN COMMISSION, WHICH WAS TO BE VOTED UPON, WAS PROCEDURAL; 10 VOTED IN FAVOR AND THE USSR VOTED AGAINST. THE PRESIDENT RULED THAT THE

PROPOSAL WAS PROCEDURAL, AND WAS UPHELD BY THE UNITED STATES, THE UNITED KINGDOM AND FRANCE, AMONG OTHERS. HENRY CABOT LODGE, SPEAKING FOR US, SAID:

"I WOULD LIKE TO MAKE A FEW MORE REMARKS ON THIS SUBJECT TO SUMMARIZE THE POSITION OF THE UNITED STATES BOTH ON OUR PROCEDURE TODAY AND ON THE FOUR-POWER DECLARATION. THE UNITED STATES HAS CONSISTENTLY TAKEN THE VIEW THAT THE SO CALLED DOUBLE VETO CANNOT BE USED TO MAKE SUBSTANTIVE A MATTER DECLARED BY THE FOUR-POWER DECLARATION TO BE PROCEDURAL. THIS WAS CLEARLY EXPRESSED BEFORE THE COUNCIL BY AMBASSADOR GROSS, THE UNITED STATES REPRESENTATIVE, ON 29 SEPTEMBER 1950, NEARLY TEN YEARS AGO..."

AND AMBASSADOR LODGE WENT ON TO QUOTE AMBASSADOR GROSS, AS HAVE I. AMBASSADOR LODGE CONCLUDED BY SAYING:

"THAT WAS TEN YEARS AGO, BUT THAT CONTINUES TO BE THE VIEW OF THE UNITED STATES." (848TH MEETING, PARA 148)

WHAT CONCLUSIONS CAN ONE DRAW FROM THIS HISTORY? THE FOUR POWER STATEMENT PLAINLY INTENDED TO GIVE RELIABLE ASSURANCE THAT NO GREAT POWER, HOWEVER FORTIFIED IN OTHER MATTERS WITH THE VETO POWER, WOULD BE ABLE TO BLOCK ACTION DESIRED BY A MAJORITY OF THE MEMBERS OF THE SECURITY COUNCIL ON QUESTIONS THAT COULD REASONABLY BE REGARDED AS PROCEDURAL. NEITHER THE CHARTER NOR THE FOUR POWER STATEMENT PURPORTED TO BESTOW ON PERMANENT MEMBERS AN ARBITRARY POWER TO VETO WHAT IS IN REALITY PROCEDURAL; THE CHARTER ITSELF MAKES CLEAR THAT THERE IS NO VETO ON SUCH MATTERS WHEN, IN ARTICLE 27, PARAGRAPH 2, IT STATES THAT "DECISIONS OF THE SECURITY COUNCIL ON PROCEDURAL MATTERS SHALL BE MADE BY AN AFFIRMATIVE VOTE OF NINE MEMBERS."

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 00209 04 OF 05 212308Z

THE FOUR POWERS ACTED IN 1945 TO INCLUDE AMONG QUESTIONS THAT WOULD BE CONSIDERED TO BE PROCEDURAL PROPOSALS FOR PARTICIPATION BY A U.N. MEMBER STATE NOT A MEMBER OF THE SECURITY COUNCIL OR FOR PARTICIPATION BY A STATE NOT A MEMBER OF THE U.N. IN OUR VIEW, THE QUESTION OF PARTICIPATION BY A NON-STATE ENTITY OR MOVEMENT CAN ONLY BE ASSIMILATED TO SUCH QUESTIONS. OPINION AMONG THE MEMBERS OF THE COUNCIL, LONG TIME-ALLY OR OTHERWISE, IS CLEARLY OF THE VIEW THAT A MOTION CONCERNING PARTICIPATION -- WHETHER IT IDENTIFIES RULE 39,

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USUN N 00209 05 OF 05 212327Z

67

ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 (ISO) W

----- 087745

O 212155Z JAN 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 5453

C O N F I D E N T I A L SECTION 5 OF 5 USUN 0209

EXDIS

MAKES NO REFERENCE TO THE RELEVANT RULE OF PROCEDURE OR INFLATES THE MATTER AS IN THE CASE OF THE PLO--INVOLVES PROCEDURAL MATTERS. THIS BEING SO, THERE WAS NO WAY TO PREVENT THE PLO FROM APPEARING AS A WITNESS, EVEN IF ITS APPEARANCE IS DRESSED BY A FORMULATION PURPORTING TO SAY THAT IT WILL HAVE THE SAME PARTICIPATORY RIGHTS "AS IF IT WERE A MEMBER STATE". HAD THE UNITED STATES TRIED TO DO SO, WE WOULD NOT HAVE BEEN ACTING IN GOOD FAITH, WE WOULD HAVE IGNORED LONG STANDING, PUBLIC AND RECORDED AMERICAN TRADITIONS, ESPECIALLY IN THE 1950 CHINESE COMMUNIST CASE, AND THERE WOULD HAVE BEEN NO SUPPORT WHATEVER FOR OUR ATTEMPT TO CASE A VETO.

THE EXPERIENCE OF THE SECURITY COUNCIL OVER ITS THIRTY YEARS SHOWS THAT THE SYSTEM OF THE COUNCIL IS ABLE TO RESOLVE THE IMPASSE THAT MIGHT ARISE IF A PERMANENT MEMBER WERE IN GOOD FAITH TO BELIEVE A MATTER TO BE SUBSTANTIVE WHILE A MAJORITY CONSIDERED IT PROCEDURAL. ONE WAY OR ANOTHER, WHETHER PRELIMINARILY OR SUBSEQUENTLY, A MAJORITY IN THE COUNCIL THAT CONSIDERS THE ISSUE TO BE PROCEDURAL WILL BE ABLE, WHEN THE MATTER IS PUT TO THE VOTE, TO PREVAIL IN THEIR CATEGORIZATION.

THIS IS THE WAY THE SYSTEM OF THE COUNCIL RESOLVES CONTESTED ISSUES; IT IS EXACTLY WHAT THE CHARTER CONTEMPLATES WILL HAPPEN. WHILE THERE IS THE POSSIBILITY OF REFERRING THE MATTER TO THE INTERNATIONAL COURT OF JUSTICE FOR AN ADVISORY OPINION, THIS HAS NEVER BEEN DONE. THIS IS UNSURPRISING FOR ITS IS THE NATURAL AND DESIRABLE TENDENCY
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 00209 05 OF 05 212327Z

OF ANY PARLIAMENTARY INSTITUTION TO RESOLVE FOR ITSELF

WITHIN ITS OWN HOUSE CONTESTED PROCEDURAL MATTERS, RATHER THAN TO REFER THEM TO AN OUTSIDE TRIBUNAL. THUS, IF A MARGINAL CASE WERE TO ARISE, THE DOUBLE VETO WILL PREVAIL ONLY WHEN THE OBJECTING PERMANENT MEMBER IS ABLE TO CARRY A MAJORITY WITH IT OR TO PERSUADE A MAJORITY THAT THERE IS SUFFICIENT DOUBT OVER THE QUESTION THAT THEY SHOULD NOT VOTE IN FAVOR OF CATEGORIZING THE ISSUE AS PROCEDURAL.

I AM NOT CONCERNED OVER THESE CONCLUSIONS. THE UNITED STATES POWER TO VETO HOSTILE SUBSTANTIVE ACTION IS JUST AS EFFECTIVE ON MATTERS OF SUBSTANCE AS AT ANY TIME IN THE HISTORY OF THE UNITED NATIONS. THE UNITED STATES HAS CAST 12 VETOS AS OF THE BEGINNING OF 1976; I MYSELF HAVE CAST 5 OF THOSE.

NOTHING IN LIFE IS COST-FREE. EVERY VETO HAS ITS OWN PARTICULAR POLITICAL AND DIPLOMATIC COSTS. WE DO NOT WELCOME A VETO, LEAST OF ALL WHEN WE FEEL OBLIGED TO CASE ONE. BUT THE EFFECTIVENESS OF THE VETO AS A BAR AGAINST UNDERSIRED SUBSTANTIVE ACTION BY THE SECURITY COUNCIL REMAINS UNDIMINISHED.

UNQUOTE
MOYNIHAN

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INSTRUCTIONS, TEXT, MEETINGS, SPEECHES
Control Number: n/a
Copy: SINGLE
Draft Date: 21 JAN 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USUNN00209
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760023-0636
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760134/aaaabeaz.tel
Line Count: 623
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 12
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 13 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <13 MAY 2004 by ShawDG>; APPROVED <15 SEP 2004 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DOUBLE VETO SPEECH FOR AMB. MOYNIHAN THERE FOLLOWS THE TEXT OF A STATEMENT PREPARED FOR
TAGS: PFOR, PORG, XF, UN, (MOYNIHAN, WILLIAM P)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006